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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,810	09/11/2003	Scott A. Fath	04981-00469.US	5228
23416	7590	06/13/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			GEHMAN, BRYON P	
P O BOX 2207			ART UNIT	
WILMINGTON, DE 19899			PAPER NUMBER	
			3728	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/659,810	<b>Applicant(s)</b> FATH ET AL.	
	<b>Examiner</b> Bryon P. Gehman	<b>Art Unit</b> 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 through 14 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Guyer (2,888,132) in view of either one of Swift (192,883) and Meyers (3,276,574), and further in view of Focke et al. (4,932,534). Guyer disclose a ten pack carton blank (Figure 4) for packaging ten packs in two rows with five packs in each row in side-to-side abutting relationship with one another, the blank including front (10), rear (12), top (11), bottom (13) and side wall structure, perforated score lines (parts of 33) for separating an assembled ten pack carton into smaller multi-pack retail units, each smaller multi-pack retail unit having an open end exposing the packs therein. To provide wall structure totally enclosing the packs would require elimination of apertures 31 and 32, another obvious elimination of parts and their function. Swift and Meyers each disclose providing a divisible carton structure wherein the carton structure is divisible into various combinations. To modify the structure of Guyer employing the variously divisible carton teaching of either one of Swift and Meyers would have been obvious in order to provide desired numbers of sub-cartons, as suggested by either one of Swift and Meyers. Focke et al. disclose an adhesive dot (97) securing each pack within a carton (see Figures 23 and 24, and column 6, lines 31-37). To modify the prior art further employing the adhesive dot teaching of Focke et al. would

have been obvious in order to secure each of the packs within the carton, as suggested by Focke et al..

3. Claims 1 through 14 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Cobler (5,158,178) in view of either one of Swift and Meyers, and further in view of Focke et al. (4,932,534). Cobler discloses a ten pack carton blank (Figure 7) for packaging ten packs in two rows with five packs in each row in side-to-side abutting relationship with one another, the blank including front (222), rear (224), top (234, 236), bottom (220) and side wall structure, perforated score lines (250, 254, 258) for separating an assembled ten pack carton into smaller multi-pack retail units, each smaller multi-pack retail unit having an open end exposing the packs therein. To provide a complete side-by-side abutting relationship of the packs would require elimination of the dividers (214 and 216), an obvious elimination of parts and their function. Swift and Meyers each disclose providing a divisible carton structure wherein the carton structure is divisible into various combinations. To modify the structure of Cobler employing the variously divisible carton teaching of either one of Swift and Meyers would have been obvious in order to provide desired numbers of sub-cartons, as suggested by either one of Swift and Meyers. Focke et al. disclose an adhesive dot (97) securing each pack within a carton (see Figures 23 and 24, and column 6, lines 31-37). To modify the prior art further employing the adhesive dot teaching of Focke et al. would have been obvious in order to secure each of the packs within the carton, as suggested by Focke et al..

4. Claims 1, 3, 7 and 9 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Guyer (2,888,132) in view of Focke et al. ('534). Guyer discloses a ten pack carton blank (Figure 4) for packaging ten packs in two rows with five packs in each row in side-to-side abutting relationship with one another, the blank including front (10), rear (12), top (11), bottom (13) and side wall structure, perforated score lines (parts of 33) for separating an assembled ten pack carton into smaller multi-pack retail units, each smaller multi-pack retail unit having an open end exposing the packs therein. To provide wall structure totally enclosing the packs would require elimination of apertures 31 and 32, another obvious elimination of parts and their function. Focke et al. disclose an adhesive dot (97) securing each pack within a carton (see Figures 23 and 24, and column 6, lines 31-37). To modify the prior art further employing the adhesive dot teaching of Focke et al. would have been obvious in order to secure each of the packs within the carton, as suggested by Focke et al..

5. Applicant's arguments with respect to claims 1-14 have been considered but are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The differences between Guyer and Cobler not supplied by the secondary references are maintained to have been obvious modifications to one of ordinary skill in the art and fail to provide any new and unexpected results by their definition.

With respect to Cobler not having an open “end”, it is maintained that score lines across the length dimension of Cobler will provide open ends of each smaller retail unit.

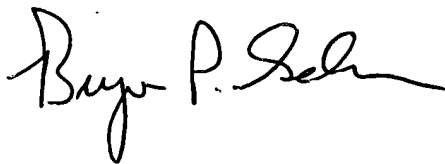
**6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent than the last name "Gehman".

Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG